

## Chapter 7

# Permanent Disability Benefits

➔ *For tips on how to “Keep Your Claim on Track,” see page 17. See also Chapter 9, “For More Information and Help.”*

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### What are permanent disability benefits?

Most workers recover from their job injuries. But some continue to have problems. If your treating doctor says you will never recover completely or will always be limited in the work you can do, you may have a permanent disability. This means that you may be eligible for permanent disability (PD) benefits.

PD benefits are payments that help make up for limitations in the work you can do in the *future*. However, you don't have to lose your *current* job to be eligible for PD benefits.

PD benefits are limited. If you lose income, PD benefits may not cover all the income lost. If you experience losses unrelated to your ability to compete for jobs, PD benefits may not cover those losses.

### **Other Benefits Besides PD**

If you have a permanent disability, you may also be eligible to receive:

- Medical care for your injury, described later in this chapter.
- A supplemental job displacement benefit. To learn about this benefit, see Chapter 8.
- Other financial help, such as Social Security disability benefits and benefits offered by some employers and unions. To find out about these benefits, use the resources in Chapter 9.

### **What is a P&S report?**

When you reach a point where your medical condition is not improving and not getting worse, your condition is called “permanent and stationary” (P&S). This is referred to as the point in time when you have reached maximal medical improvement (MMI). When this happens, your primary treating physician writes a P&S report.

The P&S report should describe:

- Specific medical problems, such as how much you can move the injured parts of your body and how much pain you have.
- Limits on the work you can do. These are called “work restrictions.”
- Medical care that you may need in the future for your injury.
- Whether you are able to return to your old job.
- An estimate of how much your disability is caused by your job, compared to how much it is caused by other factors. (**Note:** You must answer questions from your treating doctor concerning other medical problems that may be causing your disability.)

Your primary treating physician sends the P&S report to the claims administrator.

**Important!** The P&S report will affect your future benefits. You have a right to receive a copy of it. Request in writing that the claims administrator or your doctor give you copies of all medical reports.

Your primary treating physician must use special language to describe your disability. This language affects your benefits. If you have questions, ask the doctor. Read the P&S report carefully, make sure it's complete, and see if you agree with the doctor's conclusions. Information that is incorrect or left out could result in loss of some benefits.

## **I don't agree with the P&S report. What can I do?**

Sometimes different doctors have different opinions about a worker's disability. You have a right to challenge the P&S report.

To review the steps you can take if you disagree with a medical report, see Chapter 4, pages 26-29 and 32.

## **What is a rating?**

A "rating" is a percentage that estimates how much your disability limits the kinds of work you can do or your ability to earn a living. It determines the amount of your PD benefits.

Ratings are based on several factors:

1. Your medical condition, as described in the P&S report or in a medical-legal report (medical-legal reports are described in Chapter 4, page 29).
2. Your date of injury.
3. Your age when injured.
4. Your occupation (based on your job at the time of injury).
5. How much your disability is caused by your job, compared to how much it is caused by other factors. This is called "apportionment."
6. Multiplication by an adjustment factor:
  - If you were injured in 2013 or later, the adjustment factor is 1.4.
  - If you were injured before 2013 and your permanent disability is rated using the 2005 rating schedule (described in the box, "Rating Schedules), the adjustment factor is based on your reduced "future earning capacity."

A rating of 100% means that you have a permanent *total* disability. Ratings of 100% are very rare. A rating between 1% and 99% means you have a permanent *partial* disability. Most injured workers do not have a permanent disability, and those who do usually have ratings between 5% and 30% (if injured before 2005).

### Rating Schedules

The "Schedule for Rating Permanent Disabilities" is used to rate disabilities based on the factors listed above. There are three schedules:

1. **2005 rating schedule.** If you were injured in 2005 or later, the 2005 rating schedule applies to you.
2. **2005 or 1997 rating schedule.** If you were injured between April 1997 and December 2004 and, prior to 2005, there was no comprehensive medical-legal report or no report by a treating physician indicating that you had a permanent disability, or your employer was not required to send you a notice about PD benefits, then the 2005 rating schedule applies to you. Otherwise, the 1997 rating schedule applies to you.
3. **1988 rating schedule.** If you were injured before April 1997, in most cases the 1988 rating schedule applies to you.

To see the schedules, contact a state Information & Assistance officer (see pages 70-72). To view the schedules, go to the Division of Workers' Compensation website: [www.dwc.ca.gov](http://www.dwc.ca.gov) (link to Publications).

### How is my disability rated?

The P&S report is the first major step in the rating process:

- If the 2005 rating schedule applies to you (see "Rating Schedules" box), when your treating doctor writes the P&S report, he or she must rate your "impairment," or how much you have lost the normal use of injured parts of your body. The doctor's methods for rating your impairment must follow guidelines published by the American Medical Association (AMA).
- If one of the earlier rating schedules applies to you, your treating doctor is not required to rate your impairment in the P&S report. Instead, the doctor must describe your disability according to factors listed in the rating schedule that applies to you.

To review the steps you can take if you disagree with a medical report, see Chapter 4, pages 26-29 and 32.

Next, you, your attorney, or the claims administrator can ask a state disability rater to rate your disability based on the P&S report. (If you were examined by a QME and don't have an attorney, a state disability rater will automatically rate your disability.) Also, the claims administrator and your attorney may each try to predict a rating that a workers' compensation judge would consider appropriate.

### **Examples of Permanent Disability Ratings**

*These examples are not adjusted for age, occupation, or other factors causing the disability (apportionment).*

<b>Disability</b>	<b>Injury in 2005-2012</b>	<b>Injury in 2013 or later</b>
Total loss of vision in one eye, normal vision (20/20) in other eye	22% (adjusted for reduced "future earning capacity")	28% (adjusted by factor of 1.4)
Amputation of index finger at middle joint	9% (adjusted for reduced "future earning capacity")	11% (adjusted by factor of 1.4)

### **I disagree with the rating by the claims administrator. What can I do?**

You have a right to challenge the rating. Different people reviewing the same medical report will sometimes rate a worker's disability differently.

You or your attorney (if you have one) can negotiate with the claims administrator over the correct rating of your disability. You can request a rating by a state disability rater and use this rating in your negotiations. If you and the claims administrator can't agree on the rating of your disability, you can request that a workers' compensation judge decide on the correct rating.

### **I disagree with the rating by the state disability rater. What can I do?**

If you don't have an attorney, you can ask the administrative director of the state Division of Workers' Compensation (DWC) to determine if mistakes were made in the medical evaluation process or the rating process. This is called reconsideration of your rating. You can also present your case to a workers' compensation judge.

To get help in requesting reconsideration or presenting your case to a workers' compensation judge, contact a state Information & Assistance officer (see pages 70-72). Ask about possible delays in the reconsideration process.

If you have an attorney, he or she can present your case to a workers' compensation judge.

## How are PD payments determined?

PD benefit amounts are set by law. The claims administrator will determine how much to pay you based on several factors:

1. Rating(s) of your disability.
2. Your date of injury.
3. Your wages before you were injured.
4. Whether or not your employer offers you work meeting the requirements listed on pages 55-56. See "How are my PD payments affected if my employer does or doesn't offer me work?"

### Examples of PD Benefits

*Note: These examples are based on ratings that are adjusted by a factor of 1.4 (for injuries in 2013 and later) or adjusted for reduced "future earning capacity" (for injuries in 2005-2012), but not adjusted for age, occupation, or other factors causing the disability. They apply to workers who earned more than \$435 per week before the injury and whose employer has fewer than 50 employees.*

<b>Disability</b>	<b>Injury in 2005-12</b>	<b>Injury in 2013</b>	<b>Injury in 2014</b>
Total loss of vision in one eye, normal vision (20/20) in other eye	\$19,665.00 (total)	\$27,312.50 (total)	\$34,437.50 (total)
Amputation of index finger at middle joint	\$6,210.00 (total)	\$7,877.50 (total)	\$9,932.50 (total)

## When do I receive PD payments?

If you have a permanent *partial* disability, you are eligible to receive the total amount of your PD benefits spread over a fixed number of weeks. If you have a permanent *total* disability, you are eligible to receive PD payments for the rest of your life.

PD payments are due as listed below, except as follows: If your employer offers you work that pays at least 85 percent of the wages and benefits that you were paid at the time of injury or you are working in a job that pays at least 100 percent of the wages and benefits that you were paid at the time of injury, you will not receive PD payments until after a workers' compensation judge approves a settlement of your case or decides on the PD benefits you will receive. If neither of the above is true:

- If you were receiving temporary disability (TD) benefits, the first PD payment is due within 14 days after the final TD payment.
- If you weren't receiving TD benefits, you should receive the first PD payment within 14 days after the claims administrator learns that you have a permanent disability caused by your injury. After the first payment, PD benefits must be paid every 14 days.

PD payments end when you reach the maximum amount allowed by law or when you settle your case and receive a lump sum. **Note:** This lump sum is reduced by the PD benefits that you already received, including any lump sum advances.

## How are my PD payments affected if my employer does or doesn't offer me work?

**Note:** This question only affects workers who were injured sometime in 2005 through 2012 and whose employers have 50 or more employees. If you were injured in 2013 or later, or if your employer has fewer than 50 employees, your PD payments are not affected by whether your employer offers you work.

If your employer offers you regular, modified, or alternative work meeting the requirements listed below, your PD payments decrease by 15% starting on the date you receive the offer. If your employer does not make this offer, your PD payments increase by 15% starting 60 days after your condition becomes permanent and stationary.

- To offer regular work, your employer or the claims administrator must send you a "Notice of Offer of Regular Work" (on form DWC-AD 10118) within 60 days after your condition becomes permanent and stationary. The work must:
  - Pay the same wages and benefits as your old job

- Meet the work restrictions in the doctor's report
  - Last at least 12 months
  - Be within a reasonable commuting distance of where you lived at the time of injury.
- To offer modified or alternative work, your employer or the claims administrator must send you a "Notice of Offer of Modified or Alternative Work" (on form DWC-AD 10133.53) within 60 days after your condition becomes permanent and stationary. The work must:
- Pay at least 85% of the wages and benefits you were receiving at the time of injury
  - Meet the work restrictions in the doctor's report
  - Last at least 12 months
  - Be within a reasonable commuting distance of where you lived at the time of injury.

### **Notices About PD Payments**

The claims administrator must keep you up to date by sending letters that explain:

- How PD payments were determined
- When you will receive PD payments
- Reasons for delay or nonpayment of PD benefits
- Reasons for changes in PD benefit amounts
- Why PD benefits are ending (with a list of all PD benefits paid).

### **Is the claims administrator required to pay a penalty for delays in PD payments?**

Yes. If the claims administrator sends a payment late, he or she must pay you an additional 10% of the payment.

This is true even if there was a reasonable excuse for the delay and even if the claims administrator sends a letter explaining the delay. (Note, however, that this penalty is not required if you did not file a claim form for your injury.)



You could be awarded a total of 25% of each late payment, up to \$10,000, if there was *no* reasonable excuse for the delay.

## **Can my case be settled?**

Yes. After your disability is rated, the claims administrator may offer to settle your case. A settlement is an agreement between you and the claims administrator. There are two different ways to settle your case:

### **1. Stipulations with Request for Award (“Stips”)**

- **Payments.** You and the claims administrator agree on when and how long you’ll continue to receive PD payments. You also agree on how much each payment will be.
- **Medical care.** The claims administrator usually agrees to keep paying for medical care for your injury, as long as care is needed. **Note:** Medical treatment guidelines for treating job injuries are described in Chapter 3 (see "What kind of medical care is available to injured workers?"). They can be used even if your case settled before the guidelines were added to workers' compensation law in 2003.
- **Possible changes in benefits.** If your condition gets worse, you have a right to request additional workers’ compensation benefits. Similarly, if your condition improves, the claims administrator has a right to request that the benefits be reduced. Usually a request for increase or decrease in benefits must be made within five years after the date of your injury.

### **2. Compromise and Release (“C&R”)**

- **One payment.** The claims administrator agrees to pay you a lump sum. This covers the PD payments you haven’t received yet.
- **Medical care.** If the lump sum (above) covers the estimated cost of future medical care, the claims administrator will no longer pay your doctor. This becomes your responsibility.
- **No changes in benefits.** You don’t have the right to request additional workers’ compensation benefits if your condition gets worse. Similarly, the claims administrator doesn’t have the right to request that your benefits be reduced if your condition improves.

If you and the claims administrator agree on a settlement, a workers’ compensation judge must review it to determine whether it is adequate.

## **What if I don't agree with the claims administrator's settlement offers?**

You are not required to accept the claims administrator's offers. You can negotiate a settlement. If you can't reach an agreement with the claims administrator, you can present your case to a workers' compensation judge. The judge will decide what benefits you will receive. This decision is called a Findings and Award. It will be sent to you in writing.

Negotiating a settlement or presenting your case to a workers' compensation judge can be difficult. To get help, use the resources in Chapter 9.